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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

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Inter-Carrier Compensation)
for ISP-Bound Traffic)

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CC Docket No. 99-

COMMENTS OF CHOICE ONE COMMUNICATIONS, INC.

Choice One Communications, Inc. ("Choice One") submits these comments in response to the *NPRM* issued in this proceeding.¹ Choice One is a competitive local exchange carrier ("CLEC") and an interexchange carrier ("IXC") providing facilities-based and resold telecommunications services in New York and Pennsylvania.

I. INTRODUCTION AND SUMMARY

Choice One urges the Commission to utilize the current reciprocal compensation framework to establish rules regarding inter-carrier compensation for ISP-bound traffic. Specifically, the Commission should continue to require compensation to be set through carrier negotiations with state arbitration of disputes, subject to national guidelines that the Commission should establish in this proceeding. The current model of carriers setting reciprocal compensation rates through negotiation and arbitration has worked well and has served the public interest. Although the states should continue to take the lead in facilitating the formulation of rates through the interconnection and arbitration process, the FCC should adopt general regulations to govern inter-carrier compensation for ISP-bound traffic. In setting such guidelines, the Commission need look no further

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling and Notice of Proposed Rulemaking, CC Docket Nos. 96-98, 99-68, FCC 99-38, released February 26, 1999 ("Reciprocal Compensation Order" or "*NPRM*").

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than the rules it has already established with regard to reciprocal compensation. Because ISP-bound traffic has been treated as local for regulatory purposes, and the costs associated with transport and terminating data traffic over the circuit switched network are no different than the costs for voice traffic, the Commission should simply apply its general reciprocal pricing rules to ISP-bound traffic.

I. The Carrier Negotiated Rates for Reciprocal Compensation Have Served the Public Interest

The current structure for establishing reciprocal compensation rates is based on the rules adopted by the Commission in the *Local Competition Order*.² The Commission decided, pursuant to Section 251(b)(5) of the Telecommunications Act of 1996 ("1996 Act"), that local exchange carriers may set reciprocal compensation rates through negotiation, and can arbitrate those rates before the state commissions if the carriers are unable to agree.³ Carriers and state commissions assumed that the reciprocal compensation provisions of the 1996 Act and the Commission's rules applied to ISP-bound traffic. Accordingly, throughout the last several years, carriers have agreed upon reciprocal compensation rates and twenty-nine state commissions have concluded that such rates apply to ISP-bound traffic.

There is no reason for the Commission to now require the industry to change course. The regulatory framework currently in place for compensation of ISP-bound traffic has served the public interest and should be maintained. The inter-carrier compensation arrangements for ISP-bound

² *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No.96-98, First Report and Order, 11 FCC Rcd 15499, 15805-15806, paras. 694-606 (1996) (*Local Competition Order*), *vacated in part, aff'd in part*, Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), *aff'd in part, rev'd in part* AT&T Corp. v. Iowa Utils. Bd., 119 S.Ct. 721 (1999).

³ *Local Competition Order*, at ¶ 133.

traffic have helped stimulate the growth of Internet services and the Commission should embrace this compensation structure.

II. Inter-carrier Negotiation is the Best Method for Establishing Rates

In the *NPRM*, the Commission tentatively concluded that "commercial negotiations are the ideal means of establishing the terms of interconnection contracts."⁴ Choice One wholeheartedly agrees with the Commission's conclusion. Individual carriers are in the best position to identify and establish prices that will provide reasonable compensation in light of the current costs. Carriers are also in the best position to tailor inter-carrier compensation arrangements to suit the particular needs of the parties.

Relying on inter-carrier negotiations to set reciprocal compensation rates for ISP-bound traffic is also the most efficient and least burdensome means. Moreover, permitting rates to be set by individual negotiation is most consistent with the goals of the 1996 act to create a "pro-competitive, deregulatory national policy framework" for the provision of telecommunications services in the United States.⁵ The Commission should, therefore, affirm its tentative conclusion that the first step toward setting compensation rates for ISP-bound traffic should be pursuant to individual carrier negotiations.

In addition, the Commission should affirm new entrant's rights to opt-in to existing interconnection agreements, or portions thereof. As a new entrant to the local exchange market,

⁴ *NPRM*, at ¶ 28.

⁵ Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong. 2d Sess. 1 (1996)("Joint Explanatory Statement").

Choice One submits that affirming the rights of CLECs to opt-in to interconnection agreements will substantially promote competition and conserve resources.

The Commission should also require ILECs to negotiate reciprocal compensation arrangements with CLECs. As discussed below, some ILECs are avoiding reciprocal compensation by simply refusing to include such provisions in interconnection agreements. The Commission should prohibit this practice and require ILECs to negotiate with CLECs for reciprocal compensation for ISP-bound traffic.

III. The Commission Should Also Provide for Arbitration by the State Commissions

Although the most efficient means for setting inter-carrier compensation rates is through individual negotiation, the reality is that parties can not always reach agreement. Under such circumstances it is important for carriers to have a dispute resolution procedure they can utilize. Accordingly, the Commission should establish the same policy that is currently available when carriers are unable to reach agreement on an interconnection issue—arbitration. This is especially necessary in the current environment in which incumbent local exchange carriers ("ILECs") continue to possess the overwhelming share of the local service market. Without an opportunity for arbitration, ILECs will be able to impede competitive local exchange carrier ("CLEC") ability to enter the market by denying CLECs reasonable inter-carrier compensation for ISP-bound traffic. Recent action has already demonstrated the propensity of ILECs to engage in such behavior. For instance, Bell Atlantic has refused to negotiate provisions of interconnection agreements that concern the payment of reciprocal compensation for ISP traffic. In fact, Bell Atlantic has attempted to insert restrictions upon the payment of such compensation into existing interconnection agreements that CLECs sought to adopt under 47 U.S.C. § 252(i), even though state regulators had construed the

underlying agreement to require the payment of reciprocal compensation for ISP traffic.⁶ Accordingly, the opportunity for arbitration is essential to ensuring CLECs the opportunity to enforce the requirements of the 1996 Act.

These arbitration proceedings would best be handled by the state commissions for various reasons. First, the state commissions have already participated in the arbitration process and have the resources and procedures in place under Section 252 to conduct arbitrations. Although the Commission could certainly develop the expertise to conduct arbitrations, the Commission currently has neither the time nor the resources to delve into what could be numerous proceedings. The Commission's resources are already strained, and it is under pressure to decrease, not increase the scope of its regulatory review.

The Commission, however, should play an important role in establishing inter-carrier compensation for ISP-bound traffic. By establishing national guidelines that the states are required to follow, the Commission can enhance the efficiency of the process and ensure that carriers are fairly compensated for terminating ISP-bound traffic.

IV. The Commission Should Establish National Pricing Guidelines

While states should be permitted to set rates in specific arbitrations requested by carriers, the Commission should establish national guidelines. This determination is consistent with the Commission's analysis in the *Local Competition Order*. There, the Commission explained the importance of national guidelines for the states to follow in implementing the 1996 Act.

⁶ Choice One itself was the victim of such tactics in New York when it sought to adopt the interconnection agreement of ACC in September of 1998.

Specifically, the Commission recognized the importance of federal regulations to help guide states through arbitration issues:

[E]stablishing certain rights that are available, through arbitration, to all requesting carriers, will help advise parties of their minimum rights and obligations, and will help speed the negotiation process. In effect, the Commission's rules will provide a national baseline for terms and conditions for all arbitrated agreements. Our rules may also tend to serve as a useful guide for negotiations by setting forth minimum requirements that will apply to parties if they are unable to reach agreement.

Local Competition Order, at ¶ 60.

The rationale the Commission expressed in the *Local Competition Order* certainly exists with regard to this issue. Without national guidelines, experience has shown that some states may not as vigorously pursue the goals of the 1996 Act. For example, during the period in which the Commission's pricing rules were vacated, not all states properly implemented TELRIC pricing. Accordingly, as the Commission has already concluded, federal pricing guidelines will provide the minimum benchmark needed to ensure that the goals of the 1996 Act are being furthered.

A. The Federal Pricing Rules Should be Based on TELRIC

As the Commission established in the *Local Competition Order*, the appropriate pricing of ILEC services and elements should be based on a forward looking cost methodology. The Commission concluded that in a competitive, efficiently operating market environment, service providers will set pricing based on forward looking costs.⁷ The Commission, therefore, concluded that Total Element Long Run Incremental Cost ("TELRIC") was the appropriate forward looking cost methodology to implement the local competition provisions of the 1996 Act. Because this rationale is plainly applicable to inter-carrier compensation for ISP-bound traffic, Choice One urges

⁷ *Local Competition Order*, ¶¶ 620, 672, 1054.

the Commission to require states to use a TELRIC methodology when setting the rates for the termination of ISP-bound traffic

Moreover, states that have not completed TELRIC proceedings should be permitted to adopt the proxy rates the Commission adopted in the *Local Competition Order*. In a situation in which no TELRIC rate is available, the proxy rate is likely to be the only feasible alternative. However, in some situations adopting the proxy rate may not be appropriate, for example, if the parties already have rates in effect. In that instance, it may serve the public interest to continue the rates currently in effect until the TELRIC proceeding is completed. Accordingly, the Commission should not require the application of proxy rates, but should permit the adoption of interim proxy rates until a TELRIC rate is established.

B. The Commission Should Require Symmetry in the Rates

It is essential in promoting the policies of the 1996 Act, that the Commission ensure that the rates for inter-carrier compensation for ISP-bound traffic be set at ILEC cost and be symmetrical. In its *Local Competition Order*, the Commission already made such determinations with regard to reciprocal compensation. The Commission stated, "it is reasonable to adopt the incumbent LEC's transport and termination prices as a presumptive proxy for other telecommunications carriers' additional costs of transport and termination."⁸ Moreover, in concluding that rates should be symmetrical the Commission noted, "[a] symmetric compensation rule gives the competing carriers

⁸ *Local Competition Order*, at ¶ 1085.

correct incentives to minimize its own costs of termination because its termination revenues do not vary directly with changes in its own costs."⁹

However, Choice One also urges the Commission to adopt the feature of its current reciprocal compensation guidelines that permits CLECs to rebut the presumption of symmetrical rates and demonstrate that they have higher costs. This safeguard will ensure appropriate compensation between the carriers.

V. Inter-Carrier Compensation for ISP-Bound Traffic Should be No Different Than Compensation for Traffic Subject to Section 251(b)(5)

The purpose of reciprocal compensation rules is to recognize that carriers incur costs when they transport and terminate a call and to compensate carriers for that expense. Although ILECs initially supported establishing reciprocal compensation instead of bill and keep, because ILECs are seeing compensation flow to CLECs, they have been arguing that terminating traffic to ISPs is somehow different than terminating a voice call. Choice One submits that the ILEC argument is purely based on an unwillingness to pay the compensation. Indeed, a CLEC's costs of transporting and terminating a call to an ISP is no different than the costs of terminating other calls to other carriers. A CLEC's costs do not vary significantly based on whether data or voice traffic is being transmitted.

Moreover, ISP-bound traffic has been treated as local traffic by state regulators and the industry. In the *Reciprocal Compensation Order*, the Commission noted that ISPs have been permitted to "purchase their links to the PSTN through intrastate local business tariffs rather than

⁹ *Id.* at ¶ 1086.

through interstate access tariffs."¹⁰ ILECs have also treated ISP-bound traffic as local. For example, the Commission points out that ILECs have characterized expenses and revenues associated with ISP-bound traffic as intrastate for separations purposes.¹¹ In addition, ILECs charge customers local rates for calls to ISPs, ISPs have local telephone numbers, and ISP premises where the calls are handed off are in the local calling area. From a regulatory perspective, dial-up calls to ISPs have uniformly been treated as local calls. Accordingly, there is no reason to treat ISP-bound calls differently with regard to reciprocal compensation and the Commission should apply its local reciprocal compensation rules to ISP-bound traffic.

VI. CONCLUSION

For the aforementioned reasons, the Commission should adopt the recommendations set forth in these Comments.

Respectfully submitted,



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Dated: April 12, 1999

¹⁰ *Reciprocal Compensation Order*, at ¶ 23.

¹¹ *Id.*

CERTIFICATE OF SERVICE

I, Martina L. Snoddy, hereby certify that on this 12th day of April 1999, copies of the foregoing Comments of Choice One Communications, Inc. were delivered by hand on the following:

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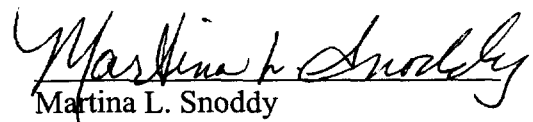
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